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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

8 ALFREDO CARRANZA, JR.,

9 Defendant.

2:11-cr-0012-LDG-RJJ

ORDER

10
11 Defendant Alfredo Carranza filed a motion to suppress evidence obtained during a search
12 of his vehicle (#11), and the magistrate judge initially issued a report and recommendation (#36,
13 objection #40, response #46) that it be denied. The court subsequently remanded the report and
14 recommendation for further consideration (# 54), and now before the court is the magistrate
15 judge's amended report and recommendation that the motion to suppress be granted (#61,
16 objection #66, response #67).

17 The government carries the burden of showing that Officer Hawkins had lawful grounds to
18 stop Carranza's vehicle. See United States v. Johnson, 936 F.2d 1082, 1084 (9th Cir. 1991) (per
19 curiam) (the government bears the burden of justifying a warrantless search). The government
20 relies on NRS 484B.413 to show that Officer Hawkins had reasonable suspicion to believe that
21 Carranza had committed a traffic infraction. NRS 484B.413 provides:

22 A driver shall not turn a vehicle from a direct course upon a highway unless and until such
23 movement can be made with reasonable safety, and then only after giving a clearly audible
24 signal by sounding the horn if any pedestrian may be affected by such movement and after
giving an appropriate signal if any other vehicle may be affected by such movement.

25 In his report and recommendation, the magistrate judge concluded that NRS 484B.413 did
26 not apply because Carranza was not operating his vehicle on the highway when he failed to signal,
but pulled out from a parked position on the side of the road. The magistrate judge found further

1 support for this conclusion by pointing to NRS 484B.410, which directly applies to starting a
2 vehicle that is “stopped, standing or parked on a highway.” The government objects to the
3 magistrate judge’s reading of NRS 484B.413 by pointing out that the definition of a highway as
4 contained in 484A.095 covers “the entire width between the boundary lines of every way dedicated
5 to a public authority when any part of the way is open to use of the public for purposes of
6 vehicular traffic[.]” The government also argues that NRS 484B.413 and NRS 484B.410 need not
7 be mutually exclusive. For his part, Carranza contends that NRS 484B.413 should be construed to
8 refer to a vehicle which is already moving in a direct course on the highway.

9 Even assuming that the location of Carranza’s parked vehicle was on a highway, as the
10 government asserts, the court interprets NRS 484B.413’s terms “direct course” to refer to the
11 movement of a vehicle from point to point. Webster’s Third New International Dictionary defines
12 “course” as “the act or action of moving in a particular path from point to point.” Granted, a
13 “course” is also defined as a “path” or a “way,” which could include, for the sake of argument, a
14 “highway.” However, that construction would turn “direct course” into surplusage because the
15 statute already places the vehicle on the highway. Indeed, as the magistrate judge ruled, NRS
16 484B.410 clearly covers the situation of a parked or stopped car on the highway, and would also
17 apply to the instance suggested by the government of a vehicle stopped at a light or stop sign
18 waiting to make a turn.

19 Even if the magistrate judge’s and this court’s “direct course” interpretation of 484B.413
20 were incorrect, however, the court must still find that Officer Hawkins lacked reasonable grounds
21 that Carranza had committed a traffic infraction. NRS 484B.413 requires “giving an appropriate
22 signal if any other vehicle may be affected by such movement.” As the transcript of the
23 suppression hearing indicates, Officer Hawkins was approximately half a block away when
24 Carranza moved his car from a stop. Officer Hawkins further testified that there were no other
25 cars between him and Carranza. Furthermore, Officer Hawkins did not testify as to any way his
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1 vehicle was, or may have been, affected by Carranza pulling out in front of him at such a distance.¹
2 The court finds that the government has not shown that Carranza was required to signal the
3 movement of his vehicle under that situation. See United States v. Nelson, 2011 WL 4948208 (D.
4 Nev. Sept. 27, 2011) (Hoffman, Magistrate Judge) (recommending that motion to suppress be
5 granted where officer made stop pursuant to NRS 484B.413 for failure to signal but where no
6 other vehicle, including officer's own, was affected by the movement of defendant's vehicle),
7 aff'd, 3:11-cr-00142-PMP-CWH (D. Nev. Oct. 17, 2011).² Accordingly,

8 THE COURT HEREBY ADOPTS the magistrate judge's report and recommendation
9 (#61) to the extent it is consistent with this order.

10 THE COURT FURTHER ORDERS that defendant's motion to suppress (#11) is
11 GRANTED.

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13 DATED this 9 day of January, 2012.

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16 Lloyd D. George
United States District Judge
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21 ¹The government suggests that darkness at that hour in the morning raises an obligation to
22 signal before turning onto a highway. Officer Hawkins, however, did not testify that Carranza's
23 running lights were not on, nor that darkness played any factor in assessing whether Carranza's driving
could have affected other vehicles in the vicinity. Indeed, as Officer Hawkins testified during the
suppression hearing, there was sufficient light in the area for him to identify Carranza's vehicle and
personal physical characteristics from his patrol car.

24 ²The court notes that the prosecutor in this case appears to be the same as in Nelson, and while
25 not required to identify adverse non-binding authority such as Magistrate Judge Hoffman's recent
26 treatment of this issue in Nelson, should not hesitate to inform the court of any such authority as a
courtesy in the future.